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OGC HAS REVIEWED.

APR 14 1954

MEMORANDUM FOR: Chief [REDACTED]

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ATTENTION : [REDACTED]

SUBJECT : Attached Proposed Cable re Sea Travel

1. This office is unable to concur in the attached proposed cable for the reasons hereinafter set forth.

2. Section 1241 of Title 46, U.S.C., provides:

"Officers and employees of Government required to travel on American ships"

"Any officer or employee of the United States traveling on official business overseas or to or from any of the possessions of the United States shall travel and transport his personal effects on ships registered under the laws of the United States where such ships are available unless the necessity of his mission requires the use of a ship under a foreign flag: Provided, That the Comptroller General of the United States shall not credit any allowance for travel or shipping expenses incurred on a foreign ship in the absence of satisfactory proof of the necessity therefor." June 29, 1936, c. 858, Title IX, § 901, 49 Stat. 2015.

3. The substance of this statutory rule has been adopted by the Agency and is restated in paragraph 8 (b) [REDACTED] which provides:

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"b. Except when headquarters may specifically exempt a station from these requirements, arrangements for shipboard travel and transportation of effects shall be made in accordance with the following:

"Any employee or dependent traveling on official business overseas or to or from any of the possessions of the United States shall travel and transport his personal effects on ships registered under the laws of the United States where such ships are available, unless the necessity of his mission requires the use of a ship under a foreign flag, except where satisfactory proof is submitted as to the necessity for the use of a foreign ship."

4. Because the enunciation of the rule in paragraph 8 (b) is so closely aligned with the statutory language, the regulation must

necessarily be construed with reference to the law. Concededly, a greater variety of situations may be contemplated in the operations of this Agency where the mission of the traveler would necessitate use of a foreign vessel than is normally the case in Government. We do not believe, however, that in any case should necessity be grounded upon reasons of personal convenience.

5. The basis of reimbursement for travel by Governmental employees is the expense of travel by the most usually travelled direct route. However, the requirement of travel on vessels of U. S. registry has been construed to take precedence over the rule requiring use of the most direct route available where the additional cost and resulting delay are not excessive. In a decision of the Comptroller General dated February 1, 1952, reported in 31 Comp. Gen. 351, the Secretary of State had inquired:

"Pending clarification from the Comptroller General, the Department has instructed the Office of the United States High Commissioner for Germany to route all travel to the United States via the port of Bremerhaven on the America. Between now and June 30, 1952, several hundred Hicog employees will be terminated, and if sailings are limited to the America individuals must be held in Germany beyond the dates it is desired to separate them at excessive salary cost, which the Department's Budget will not stand. May the Department inform Hicog that when accommodations are not available on the America, or when such sailing will unduly delay departure, they are authorized to route employees and their dependents to an Italian port where they can continue their journey to the United States via an American Export Line vessel, or they may be routed via direct foreign vessels?"

In reply, the Comptroller General stated:

"If accommodations aboard the S. S. America are not in fact available at the port of Bremerhaven, employees and their dependents should be routed by rail to Italian ports and thence by American vessels to the United States, it being understood that the additional cost and delay of such routing is not excessive."

6. Where, as in the instant case, there is available transportation on the most direct or nearly direct route on a vessel of U. S. registry, we do not believe that Headquarters authorization of indirect travel, solely for the convenience of the employee, by a route not serviced by an American sea carrier will excuse the employee from the requirement of travel on an American ship. Without demonstration of the necessity for indirect travel to accomplish a mission for the Agency, should, accordingly, not be allowed as an expense of travel against the computed cost by the most direct route any expense of sea travel via a French ship from Hong Kong to Marseilles.

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7. It may be noted, however, that the statutory requirement that Government employees travel on vessels of U. S. registry does not extend to air carriers under the same flag. Accordingly, if indirect travel is authorized, an employee may be permitted the expense of connecting air travel by foreign carrier to the port where passage for the remainder of the distance may be secured on a vessel of U. S. registry.

8. We are concerned that the present language of the proposed cable may lead [] to the improper conclusion that approval of indirect sea travel simultaneously authorizes reimbursement for the expense of travel on a French ship for a portion of the route upon his demonstration as a formality of the necessity of such travel by a showing that no U. S. vessel services the two ports in question.

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[]
LAWRENCE R. HOUTCHET
General Counsel

OGC/GHK:hm (9 April 1954)

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